

AF 72

Dkt. Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

9314-59

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on November 13, 2006

Signature

Typed or printed name Amelia Tauchen

Application Number

10/723,776

Filed

11/26/2003

First Named Inventor

VanEpps

Art Unit

2618

Examiner

Christian Hannon

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record. 42,011
Registration number

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34

Signature

D. Scott Moore

Typed or printed name

919-854-1400

Telephone number

November 13, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE--EXAMINING GROUP 2618**

Attorney Docket No. 9314-59

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: VanEpps, Jr. et al.
Application No.: 10/723,776
Filed: November 26, 2003

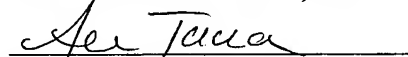
Group Art Unit: 2618
Confirmation No.: 9674
Examiner: Christian A. Hannon

For: **METHODS, ELECTRONIC DEVICES, AND COMPUTER PROGRAM PRODUCTS
FOR GENERATING AN ALERT SIGNAL BASED ON A SOUND METRIC FOR A
NOISE SIGNAL**

Date: November 13, 2006

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Amelia Tauchen

**REASONS IN SUPPORT OF APPLICANT'S PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicant requests that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

Appellants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed August 11, 2006 (hereinafter "Final Action") and the Advisory Action mailed October 30, 2006 ("Advisory Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Appellants respectfully submit that the rejections of the currently pending claims are clearly erroneous because many of the recitations of the pending claims are not met by the cited references for at least the reasons discussed herein and in Appellants' previously filed Response of October 10, 2006. Therefore, Appellants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the

right to argue additional grounds should this Petition be denied, Appellants will only discuss the recitations of independent Claims 1, 11, 14, 17, 25, 30 - 32, 37, and 38.

Independent Claims 1, 17, 25, and 32 are Patentable

Independent Claim 1 recites, in part:

receiving a noise signal;
generating a sound metric for the noise signal by performing a Fourier transform on the noise signal to obtain a frequency domain representation of the noise signal, wherein the sound metric is a loudness profile; and
generating an alert signal having a spectral composition based on the sound metric.

Independent Claims 17, 25, and 32 include similar recitations.

Independent Claims 1, 17, 25, and 32 stand rejected under 35 U.S.C. §102(e) as being anticipated by U. S. Patent Publication No. 2006/0014570 to Marx et al. (hereinafter "Marx"). (Final Action, page 2). The Final Action states that "Marx teaches that a frequency domain representation of a measured ambient level can be used to alter the loudness of a ring alert of a telephone, the inherent conversion between the time and frequency domains is the Fourier transform." (Final Action, page 3). Appellants respectfully disagree with this interpretation of Marx's teachings. Marx describes a mobile communication terminal that includes an equalizer 12, a loudspeaker 14, and a control unit 15. (Marx, FIG. 2). The control unit 15 determines the type of audio to be played through the loudspeaker 14, i.e., whether the audio is a ringing tone of an alarm, a speech signal, or a music signal. (Marx, paragraphs 33, 35, and 36). Based on this determination and the volume setting on the mobile communication terminal, the attenuation applied by the equalizer 12 to the signal is adjusted to take advantage of the frequency response characteristic of the loudspeaker 14. (Marx, paragraphs 33, 35, and 36).

Thus, in sharp contrast to the recitations of independent Claims 1, 17, 25, and 32, Marx does not appear to include any disclosure related to receiving a noise signal, generating a sound metric for the noise signal by performing a Fourier transform on the noise signal, and generating an alert signal that has a spectral composition based on the sound metric.

In response to this analysis, the Advisory Action cites the description at page 3, paragraph 32, lines 20 -27 and 31 - 35 of Marx as teaching that the control block 15 of Marx generates an alert that has a spectral composition based on a sound metric. Appellants respectfully disagree. Marx explicitly states: "[o]n the basis of the type of audio signal and the volume setting, the control unit 15 is able to retrieve the desired setting for the frequency selective attenuation of the equalizer 12 and the desired amplifier setting from a look-up table stored in the control unit 15." (Marx, page 3, paragraph 32, emphasis added). In other words, the control unit uses two things--type of audio signal and

volume setting--to control the equalizer 12. Thus, according to Marx, the spectral composition of an alert signal is not based on a sound metric for a noise signal as recited in independent Claims 1, 17, 25, and 32, but instead is based on the volume setting and the type of audio signal, which Marx identifies as speech signals, speech signals for use with a headset, speech signals for use with a loudspeaker, music signals, and ringing tones and alarms (Marx, page 3, paragraph 32, lines 18-21). Appellants further note that the control unit 15 includes only two input terminals: terminal 16 for receiving a signal identifying the audio signal type and terminal 17 for receiving a signal indicating the volume setting. (Marx, FIG. 2 and paragraph 32). Appellants can find no teaching in Marx that the control unit 15 receives or is responsive to any type of sound metric for a noise signal. Thus, even accepting the allegations in the Final Action and the Advisory Action that the equalizer 11 of Marx receives noise signals on the input terminal 11 thereof in addition to a desired signal, any such noise is not used by the control unit 15 in controlling the equalizer 12, which is responsible for the spectral composition of any alert signal output therefrom.

Applicant respectfully requests that the present application be reviewed and the rejection of independent Claims 1, 17, 25, and 32 be reversed by the appeal conference prior to the filing of an appeal brief for at least the reasons set forth above.

Independent Claims 11, 30, and 37 are Patentable

Independent Claims 11, 30, and 37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Marx in view of U. S. Patent No. 6,134,455 to Corkum (hereinafter "Corkum"). (Final Action, page 6). Independent Claim 11 recites, in part:

providing a plurality of alert profiles, each of the alert profiles being generated to have a spectral composition based on a noise signal sound metric associated with an ambient noise environment;
receiving a user selection of one of the plurality of alert profiles; and
generating an alert signal that is based on the selected one of the plurality of alert profiles.

Independent Claims 30 and 37 include similar recitations.

In rejecting independent Claims 11, 30, and 37, the Final Action cites paragraph 32 Marx as describing an alert profile that is generated to have a spectral composition based on a noise signal sound metric associated with an ambient noise environment. (Final Action, page 6). As discussed above with respect to independent Claims 1, 17, 25, and 32, Marx does not appear to disclose or suggest using a noise signal sound metric associated with an ambient noise environment to provide an alert profile with a particular spectral composition. Moreover, Appellants submit that Corkum fails to provide the teachings missing from Marx.

The Final Action cites col. 6, lines 48 - 55 of Corkum as teaching the use of a plurality of alert profiles. (Final Action, page 6). This passage describes the ability of a user to override the automatic ringer volume function by selecting a default or desired annunciation level. (Corkum, col. 6, lines 55 – 60). In sharp contrast to the recitations of independent Claims 11, 30, and 37, however, Corkum does not appear to disclose or suggest that the particular annunciation levels that can be selected by a user are generated based on a noise signal sound metric that is associated with an ambient noise environment. Furthermore, Corkum does not disclose or suggest generating an alert signal that has a spectral composition based on a sound metric for a noise signal.

In response to this analysis, the Advisory Action acknowledges that Corkum was only relied upon for teaching a plurality of alert profiles. Appellants, however, have shown in the discussion above with respect to independent Claims 1, 17, 25, and 32 that the Final Action's assertion that Marx teaches generating an alert signal that has a spectral composition based on a sound metric of a noise signal is clearly erroneous.

Accordingly, for at least the foregoing reasons, Applicant respectfully requests that the present application be reviewed and that the rejection of independent Claims 11, 30, and 37 be reversed by the appeal conference prior to the filing of an appeal brief.

Independent Claims 14, 31, and 38 are Patentable

Independent Claims 14, 31, and 38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Marx in view of Corkum. (Final Action, page 6). Independent Claim 14 is directed to a method of operating an electronic device and recites, in part:

providing a plurality of alert profiles, at least one of the plurality of alert profiles having a different spectral composition than other ones of the plurality of alert profiles; then
receiving a noise signal;
selecting one of the plurality of alert profiles responsive to receiving the noise signal; and
generating an alert signal that is based on the selected one of the plurality of alert profiles.

Thus, according to independent Claim 14, a plurality of alert profiles is generated before the noise signal is received. One of the alert profiles is selected in response to receiving the noise signal.

In sharp contrast, Marx does not disclose or suggest selecting an alert profile from among a plurality of alert profiles responsive to receiving a noise signal, but instead suggests adjusting the equalization applied to the alert signal responsive to a volume control setting and a signal that a ringing tone of an alarm is to be reproduced. (Marx, paragraph 33). Moreover, Corkum fails to provide the teachings missing from Marx.

Corkum describes determining the loudness of the ringing tone in response to receiving a paging signal and the ambient noise level at that time. (Corkum, col. 6, line 66 – col. 7, line 33). Corkum emphasizes that "[t]he loudness level of the ringing tone is thereby dynamically determined just prior to termination of a call at the mobile station. The loudness level of a ringing tone generated by the mobile station is, thereby, better able to be selected to be of a loudness level appropriate for the conditions in which the mobile station is positioned." (Corkum, col. 7, lines 34 – 40). Appellants submit, therefore, that Corkum does not appear to disclose or suggest pre-storing alert profiles that can be selected upon receiving a noise signal, but instead teaches generating a loudness level for the ringing tone each time a paging signal is received based on the ambient noise level at that time.

Furthermore, Corkum does not disclose or suggest generating alert signals that have different spectral compositions, but instead is limited to adjusting a loudness level of an alert or ringing signal based on the ambient noise level (Corkum, col. 5, line 63 - col. 6, line 15 and col. 7, lines 54 - 65).

In response to this analysis, the Advisory Action acknowledges that Corkum was only relied upon for teaching a plurality of alert profiles. Appellants, however, have shown in the discussion above with respect to independent Claims 1, 17, 25, and 32 that Marx does not disclose or suggest selecting one of a plurality of alert profiles responsive to receiving a noise signal as recited in independent Claims 14, 31, and 38. Instead, Marx teaches that the control unit 15 is responsive to only a signal type and a volume setting. Moreover, even accepting the allegations in the Final Action and the Advisory Action that the equalizer 11 of Marx receives noise signals on the input terminal 11 thereof in addition to a desired signal, any such noise is not used by the control unit 15 in controlling the equalizer 12, which is responsible for the spectral composition of any alert signal output therefrom.

Accordingly, for at least the foregoing reasons, Applicant respectfully requests that the present application be reviewed and that the rejection of 14, 31, and 38 be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,



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